



Inside Out

Finding the right answer

What is the right answer for clients?

Susler: As lawyers often say, it depends. The “right” answer is more than simply reciting applicable law, whether one is working with business clients on commercial deals or individuals on their personal matters. Ultimately, the right answer for clients is the answer that best serves the client’s needs. Determining what the client “needs” depends on the facts and circumstances of the given matter, which include a broad range of considerations.

Martini: The right answer depends on the client, the issue, how important the issue is to the client, who will ultimately make the decision and any motivating factors. The right answer for one client may be the completely wrong answer for another, and the right answer today may be different from what it used to be or what it will be in the future. It can also depend on where the client’s organization is in its lifecycle. The right answer is generally the best answer one can get to under the circumstances and is not just the correct legal answer. It also takes into account the political and business dynamics at play.

How do you go about working with clients to get to the “right answer?”

Martini: It is a process, and there are a few key considerations. You need to determine what the right answer is from a legal perspective, assuming there is one. You then need to consider the business and political dynamics that are at play for the client, and you need to know who the ultimate decision-makers and influencers are and how they will go about making the call. You also need to consider whether there is a track record for making these types of decisions at the client and what their best- and worst-case scenarios are. The client’s risk tolerance often drives this determination as well as the timeline within which the client needs to get to an answer.

Susler: The best way to start is by trying to ascertain what the client truly needs. This begins with learning the relevant facts and must progress to a discussion about the client’s goals. Then I have to discern how those goals mesh with the reality of the facts and law. Sometimes I have conversations with my client about possibly modifying their goals, tempering them or perhaps expanding them, by discussing pertinent legal and business realities, often drawing upon my own career experiences. These conversations with my clients — discussing and debating facts and law and ultimately reaching the right answer — are some of the most rewarding parts of my practice.

Talk about some lessons you have learned over the years about defining the right answer for clients.

Martini: It is very important to know and understand your client. Putting yourself in their shoes can help tremendously — but you also need to take yourself out of the equation at a certain point and not make the right answer for the client be about what the right answer is for you. This is particularly true when it comes to issues such as risk tolerance, where the client may be willing to take bigger risks than we ourselves would or vice versa.

You must also keep in mind that timing is key. The right answer for a client is generally the best answer you can get to with limited knowledge and often under extenuating circumstances. You often have to feel your way through it and rely on what past experience has taught you in similar situations. You should also remember the importance of asking the right questions. Do not be afraid to ask questions and to seek help and guidance, especially if the issue is outside your area of practice. Finally, as mentioned above, remember that there generally is no one “right” answer, and what we are really talking about is the best answer, which

more than anything is an optimization exercise across a number of different variables.

Susler: The No. 1 lesson is to listen to your client. This involves more than eliciting a recitation of the facts. You must hear their concerns, goals, passion for the matter, urgency, commitment and understanding, or lack thereof, about the situation. Discuss and explain potential outcomes, positives and negatives and assess risk. Do not simply say “no” — offer alternatives. Temper your black-letter legal advice with business (or life) reality.

No. 2: Put your ego aside. You may think you know the right answer but so may your client. In the business/commercial context, your client knows his or her business better than you do. However, your client may not readily know or appreciate the “right” answer in a legal context. As the attorney, we must guide our clients to the right answer by engaging in the conversations we previously described. Remember also to revisit these conversations because the right answer may change as a matter progresses and do not be afraid to change course with your advice. ■

questions.insideout@gmail.com

Christina L. Martini is a practicing attorney, author and columnist. She is chair of the Chicago intellectual property practice group at DLA Piper and sits on its executive committee. She focuses on domestic and international trademark, copyright, domain name, Internet, advertising and unfair competition law.

David G. Susler, is associate general counsel with National Material L.P., a manufacturing company primarily engaged in steel processing and aluminum extrusion. He has a general practice, providing advice, counseling and training to all business sectors and operation.

To submit a question for future columns, e-mail questions.insideout@gmail.com.